OFFICIAL PAPERS

Spanish Minister to Secretary of Sate. WASHINGTON, DECEMBER 11, 1851.

SIR: The circumstance of the Captain-General of Cuba cerning the proceedings against Mr. John 8 Thrasher, enables me to comply with the request conveyed in your the laws, in the manner hitherto specified. Those of the having recently written to me, for my information, conletter of the 8th instant. I enclose, therefore a copy of second class may acquire property, with an exemption of his Excellency's communication, and avail myelf of this occasion, sir, to offer to you a renewed assurance of my very distinguished consideration.

A. CALDERON DE LA JARCA. Hon. DANIEL WEBSTER, &c.

[TRANSLATION.]

Government House and office of the Captain-Generat of the Island of Caba.

MOST EXCELLENT SIR: Don J. S. Thrasher, anative of the United States, accused of the crime of high treason or conspiracy, having been tried and sentenced by the tribunal of the military commission, I think it proper hat your Excellency should be informed of the course of proceed-

ings to which this trial has given place. The military commission, as I have said before, has Thrasher, an American citizen, but for many years domiciled in this island, for the crims of conspiracy against the State, and sentenced him for eight years at hard labor. As your Excellency will perceive by the subjoined documents, the aforesaid individual, through the medium of the Consul, complains, first, that sufficient time was not allowed him to prepare his defence; that the officer of army who defended him did not consult the lawyers he had selected; and that the advocate whose services that officer availed himself of did not agree with him as to the mode of conducting the defence. Secondly, that he ought not to have been tried by a military commission in times of peace; and that he could not be charged with was a citizen of the United States. thirdly, that, although he is domiciled, he had refused to be naturalized; and that for this reason he had been prohibited from continuing the "Faro," a journal which he had been publishing in this city. Such is the total amount of grievances, reduced to the simplest mode of expression, of which Mr. Thrasher complains. It is extremely easy to reply to them.

The tribunal known by the name of military commission has, like all the rest, certain forms of proceedings previously established by law; these forms are brief, be cause the nature of the crimes over which it has jurisdiction requires that they should be so; they, however, afford sufficient guaranty to the persons accused. brevity of forms required that the arguments should be short, and that there shall not be any lawyers admitted, to introduce into these trials the same habit of sluggishness which has been carried into the proceedings of common and ordinary suits at law. In the case of Mr. Thrasher all the forms employed by the military commission have been scrupulously observed. He selected, of his own free will, whichever officer of the army he preferred to conduct his defence, and the latter had access to the proceed ings whenever he deemed it necessary, took abstracts of the same, conferred with his client, and assisted as well as Mr. Thrasher, at the trial of the case, and read on the occasion a large manuscript of defence, which the judge had fully taken into consideration when they pronounced

I do not know whether that officer did or did not con

ult with the lawyer selected by Mr. Thrasher, and I am likewise ignorant of the fact whether the individual who was entrusted with the confidence of the former conferred with the latter as to the means of defence. But, even if this had been the case, inasmuch as lawyers are not ad mitted to plead in these trials, the officer designated by the accused having to discharge the duty of conducting the defence, any consultation with advocates on the parof the latter is a spontaneous act for his own better in mation, and he may therefore select whom he prefer Above all, the most conclusive proof in justification of this tribunal is the publicity which is given to all its acts. The trial of Mr. Thrasher's case was witnessed by himself, by the Consul of the United States, and by an immense concourse of people, who bear unanimous witness to the scrupulous exactness with which all the forms were observed, as well as to the freedom and amplitude of defence granted to the accused, and to the mildness of the punishment imposed, considering the nature of I crime. It is said that he ought not to have been tried by a military commission in times of peace. This is an erro which probably owes its origin to the name by which this tribunal has been designated. The military commission established in this island since the year 1825 is a common and ordinary tribunal for the trial of such crimes as may be committed against the State. It was therefore the only authority competent to pass judgment upon Mr. Thrasher, who stood accused of conspiracy; and the latter could not have been tried by any other tribunal without manifest violation of the laws by which we are governed Mr. Thrasher, who was formerly Editor of the Faro, a literary, political, and economical paper, could not have been ignorant of the truth of this assertion, and, having offended against the State, he knowingly subjected himself to the jurisdiction of the military commission. It is added that, as a citizen of the United States, he could not have been indicted for treason. This is so singular a doctrine that I ought not to stop to refute it. I will d so, nevertheless; not without previously remarking that if Mr. Thrasher considers this doctrine a rightful one, there can be nothing strange, in fact, in his having be come a conspirator. · Protection is due to foreigners. says James Kent, in his Commentaries on American Law volume i, page 35; but they are bound to obey the law of the country, and are amenable to its tribunals for infractions of the law. If in the United States foreigners are bound to respect the laws, and, in case of their violating those laws, they are liable to be tried and punished by the tribunals of the country, what right has Mr. Thrashe to expect, in his capacity of American citizen, to be beyoud the reach of the law which in this country is applied for the punishment of traitors? What would be come of public tranquillity if foreigners were permitted to enter into conspiracies unrestrained? On the 27th of October, 1795, a treaty was concluded between Spain and the United States, in the seventh article of which Mr. Thrasher pretends to find matter o sustain his complaints; it runs thus: "And in all cases of deten-· tion or arrest for debts contracted or offences committed by any citizen or subject of one of the contricting parties, within the jurisdiction of the other, the same shall · be prosecuted by order and authority of law only, and according to the regular course of proceedings usual in such Consequently, American citizens are here responsible, in the same way that Spanish subjects are re-sponsible in the United States, for the offences or crimes which they may commit, and that responsibility is render ed effective by the tribunals, and according to the regular course of proceedings usual in such cases. Is there by chance any greater offence or crime than that of treason The American who conspires to overthrow the Government of this country, who repays the hospitality and the protection which it has extended to him, by endeavoring to destroy it, is therefore bound to answer before the tribunal for the offence which, by so doing, he may have committed, according to the regular course of proceedings usual in such cases. And which is the tribunal, (I return again to demonstrate the competency of the military com mission.) and what has been the course of proceedings adopted in Mr. Thrasher's case, which is one of conspiracy against the State? The military commission and its forms of proceedings, which have been scrupulously obthe charge of treason, or to pretend that he ought to have

It is true that by this very article the parties interested are allowed to employ such advocates, solicitors, notaries, agents, or factors as they may judge proper, and it may be that Mr. Thrasher has inferred from these words, in the article in question, that he had a right to select an advocate. But who is there so ignorant as not to know that these words have reference to such matters or suits at law in which such functionaries are required by the established course of proceeding? There are cases which need the instrumentality of agents or factors, and others which require the intervention of advocates, attorneys, and netaries. The article provides that whenever either of the parties requires such aid, the selection of the individual shall belong to the Spanish subject in the United States, and in Spain to the American citizen. But when the course of proceedings usually pursued in such cases forbids the intervention of advocates, attornevs, and notaries-and it is the case with the military commission in regard to all crimes of conspiracy over which it has jurisdiction-there is no selection, and no right to that effect can possibly exist. The forms of proceedings in this court do indeed require the intervention of an officer to conduct the defence; the accused has a right to select one; and let Mr. Thrasher say whether, in the exercise of this right, he was not perfectly free.

I likewise enclose to your Excellency the written opinion which I solicited from the Royal Court of Judicature (Real Audiencia Pretorial) of this place, asking to be in formed, as to the true meaning of the above mentioned article of the treaty; which paper will show to your Excellency that the article is only applicable to civil affairs, and not to criminal matters, in regard to which foreigners are obliged to submit to the judication of the country

domiciled in the Island. In order that your Excellency may the better understand the duties appertaining to his position as a domiciled foreigner, I will state that, according to our laws, there are three classes of foreigners taxes and excise duties, and exercise certain callings and professions; but, in return, they are obliged to take the oath of allegiance and submission before the Governor, promising to obey the laws and the general regulations of the Indies to which all Spaniards are subject. And those of the third class enjoy the same rights and are bound by the same obligations as the natives. Such are the provi-sions of the first, second, thirteenth, fourteenth, fifteenth, sixteenth, and seventeenth articles of the Royal Decree of October 21st, 1817.

Having given this explanation, your Excellency will saily perceive that even if Mr. Thrusher had been considerd simply in the light of a foreigner, he had no right to comlain, as it has been shown, in consequence of having een tried and sentenced, as a conspirator, by the military commission. How much greater the cause for considering his complaints as unfounded when it is remembered that he was a domiciled foreigner? In assuming this character of his own free will, he swore to be faithful to our Government; and in return he enjoyed certain rights and privileges which, as simply a foreigner, he could not have Will Mr. Thrasher still say that he cannot b charged with treason? The fact of his having been compelled to discontinue the publication of the "Faro," for want of naturalization, is of no importance. It has already been said that domiciled foreigners are allowed to exercise certain callings and professions, and those that are naturalized, all. Among the former, the privilege of pubishing political newspapers is not, and could not be, comprised without manifest danger to public security. Nor is this privilege granted to all Spaniards even, because the circumstances of this Island require that the Government should exercise the utmost circumspection on this point. How, then, could that privilege have been extended to domiciled foreigners, and much less to a citizen of that country whence the piratical expeditions had

I think that what I have said, together with such other effections as cannot fail to present themselves to the enightened mind of your Excellency, will suffice, undoubtlly, to give ample satisfaction to all the reclamations Government of the Union may address to you on the subject; reminding you, moreover, that this is the irst case of the kind that has occurred in this Island, and that it relates to an individual who has been for a long time branded by public opinion as the instigator and promoter of conspiracies for the purpose of overthrowing the order of things, being notoriously known as the correpondent of filibuster journals published in the United States, and for being connected with all those that are disaffected towards the Government. Even his own countrymen acknowledge the justice of the sentence, since his revolutionary sentiments and tendencies were manifest

God preserve you, &c.

JOSE DE LA CONCHA. HAVANA, NOVEMBER 28, 1851. The most excellent the Minister Plenipotentiary of her Majesty in Washington.

> [TRANSLATION.] GOVERNMENT HOUSE, AND OFFICE OF THE CAPTAIN-GENERAL OF THE ISLAND OF CUBA

Остовев 20, 1851. To the PRESIDENT of the Royal Court of Judicature, (Audiencia Pretorial:) Most Excellent Sir: It being proper, in order to sub-serve the best interests of her Majesty, that, in all such cases where the 7th article of the Treaty of Friendship between her Majesty and the Republic of the United States, signed at San Lorenzo et Real on the 27th of October 1795, is applicable in regard to citizens of said Republic there should not be the slightest difficulty as to the proper mode of proceeding. It has appeared to me that it would be expedient to obtain the considered opinions of the Royal Court of Judicature, by means of which, besides imparting to me the true meaning of the article aforesaid. I also desire to be informed whether, in case of any criminal proceedings being instituted against any native of the United States for the crime of treason, who may be domiciled or a resident of this Island, the provisions of that same article can give any occasion for any pretext to change the natural order of things, in the established forms of the permanent executive military commission, to which tribunal belongs the jurisdiction over all such crimes.

OFFICE OF THE PRESIDENT OF THE ROYAL COURT

OF JUDICATURE OF HAVANA.

MOST EXCELLENT SIR: I place into the hands of your Excellency a certified copy of the declarations made by the Fiscals, and the unanimous opinion of the Royal Court of Judicature, in pursuance to your Excellency's request to that effect, relative to the application of the 7th article of the Treaty of Friendship between her Majesty and the Republic of the United States, in regard to the subjects of vana for a considerable time, but domiciled there by regusaid Republic, which is my reply to your communication | lar proceedings; and that he has, in solemn form, sworn mentioned above. God, &c.

Most Exceller HAVANA, OCTOBER 20, 1851.

To the Most Excellent President, Governor, and

Captain General.

Most Esteemed Sir: The Fiscals beg to state: His rdship the President, with a view of avoiding any difficulties in the mode of proceeding, wishes to know the opinion of this Royal Court of Judicature in regard to the true meaning of the 7th article of the Treaty of Friendship between her Majesty and the Republic of the United States igned at San Lorenzo et Real, on the 27th of October, 795; and especially if, in case of any proceedings being instituted for the crime of treason against any native of the United States who may be domiciled or a resident of this Island, whether that article could give occasion for pretext on the part of any person to change the natural order of things, in the established forms of the permanent, executive, military commission of this place, which is the competent tribunal of the country for taking cognizance of such crimes. The fiscals can very easily satisfy, on their part, the wishes of the President, first making a few remarks in regard to the class of foreigners who may, in States. teneral, reside amongst us at the present time. And if the fiscals have to refer to the actual state of things, it is cess to the Indies; while at the present day, since the introduction of immunities in trade, and the admission of all kinds of people, the subjects of other nations constitute already a very considerable portion of our society. The latter may be divided into three classes, or be simply esignated as transient, or domiciled, or naturalized. The first mentioned preserve many ties with the country whence they came; but in the Peninsula they enjoy certain alien privileges, because this was suited to the relations of the other country with the nations to which they belonged. In the Indies there are no such alien privileges, because they were derived from treaties which had not been exded to these colonies; and on that account here they are subject to the laws of the country, and liable to be ied before the local tribunals by their respective judges. And it is not here alone that these regulations are in force; for it may well be said that it is a principle of the common law of nations that a foreigner of this class ought to be punished where he commits a crime, and to be served in his trial. Hence he has no cause, either to repel mally tried before he receives that punishment. If all communities did not possess this right, they would be in been tried by other judges, or to have gone through a different course of proceedings than that which was any means of defence within themselves. If a foreigner of the class called transient commits the crime of treason in these regions, he cannot avoid being amenable to the regular tribunals, which ought to take cognizance, and which do exercise jurisdiction over this species of crimes.

The other class of foreigners is that which is denominated nated domiciled; and these, in order to become entitled to such a character, are obliged to declare their intention of establishing' themselves in the Island, to profess the Roman religion, and then the name of the individual, that of his country, his family and profession, are for mally registered; before the letter of domicile is issued to him, he must take the oath of allegiance and submission promising to obey the laws and ordinances to which all Spo niards are amenable according to the provisions of the 4th article of the royal decree of October 31, 1817, relative to the increase of the white pepulation is this Island. Do-miciled foreigners, therefore, are subject to the laws and ordinances; and with regard to the class styled natural ized foreigners, the fiscals have little or nothing to say, because the latter have broken asunder all the ties which bound them to the land of their birth and are looked upon and considered as Spaniards in the full legal acceptation of that term. This classification being established it will be easy now to solve the question which has been proposed by the President, seeing that the 7th article of treaty alluded to respects those conservative principles which have already been pointed out, and can fully eluci-date the same in case any doubt should exist in regard to them; the article says, "That in all cases of seizure, de-tention, or arrest for debts contracted, or offences com-That in all cases of seizure, demitted by any citizen or subject of one of the contracting parties, within the jurisdiction of the other, the same shall be prosecuted by order and authority of law only, and the last of his unfounded complaints) that Mr. Thrasher has not been naturalized in this country. What will he foreigners are amenable to the competent and the fiscals, gain by that? Even if he were simple to the ware simple to the regular course of proceedings usual in the last of his unfounded complaints) that Mr. Thrasher ing to the article itself, and in the opinion of the fiscals, gain by that? Even if he were simple to the competent and the first and the foreigners are amenable to the competent and the fiscals,

The treaty is properly worded, because in civil matters reigners are never prohibited from employing such advocates and agents as they may think fit, nor the latter from interfering in those actions where their presence is required; and this is likewise the case in criminal trials; in latter, however, there is a particular course of proceedings; in cases of high treason there is a military pro-cess, which, although complete and open upon the whole does never allow the interference of attorneys and advo-cates, because, on such occasions, there is substituted in lieu of these the intervention of a person to conduct the defence, designated by the culprit, and this defender has certain powers defined by the law, time and occasion to present himself and to discharge his obligations; and it i very certain that amongst us no foreigner can be deprived of this legal guaranty. In the military courts of judicature this is the regular course of proceedings pursued in simi-lar cases; to which, according to the provisions of the 7th article, citizens of the United States who commit crime of high treason in this country must submit. On the other side, Spanish subjects will be tried in the North American Confederacy by the tribunals of that country, and in con formity with the laws and ordinances which are in force there; because the treaty is reciprocal, and the law appli cable alike to the subjects and citizens of either of the contracting parties. This is the natural and true mean ing of the 7th article, which grants the same rights to North American citizens that belong in substance to the Spanish citizen, viz. that of being tried by the constituted tribunal of the country, and according to the ordinary course of proceedings, defined by the laws and royal ordinances, without any one having the least right to chang the order of things in the established forms of the per manent, executive, military commission of this island and this the royal court of judicature considers as th most suitable reply that could be given to the inquiries of the Governor-President. Havana, October 20, 1851. (Let the papers be produced.) Alaneta, Olivares; revised Let the opinion of the court asked by the President, which e opinion of the court asked by the President, which entirely agrees with the statement made by the fiscals, be issued; together with a certified copy of their opinion and of this decree. The same were accordingly signed and revised by the judges whose names appear in the margin in Havana, the 20th of October, 1851. It is signed by the President, Carbonell, Messrs. Buelta, Escosura, Ochor Oses, Antonio Maria del Rio. The above is a true copy of the originals which are on file, concerning the matte to which they relate, and to which I testify; and, in pursuance of the order contained in the above decree, I cause these present to be drawn out in Havana, on the twentieth day of October, one thousand eight hundred and fifty-one. ANTONIO MARIA DEL RIO. True copy.

LETTER FROM MR. WEBSTER RELATING TO THE LAW OF DOMICIL. &c.

DEPARTMENT OF STATE WASHINGTON, DECEMBER 23, 1851.

TO THE PRESIDENT The Secretary of State, to whom has been referred resolution of the House of Representatives of the 15th instant, in the following words: "Resolved, That the President of the United States be requested, so far as in his judgment may be compatible with the public interest, to communicate to this House any information in posses sion of the Executive respecting the imprisonment, trial and sentence of John S. Thrasher, in the Island of Cuba, and his right to claim the protection of the Government as a native-born citizen of the United States:" ha the honor to report to the President that all the official information in possession of this Department, respecting the imprisonment, trial, and sentence of Mr. John S. Thrasher, is contained in the despatches of Allen F. Owen Esquire, late United States Consul at Havana, together with a correspondence between him and the Governor General of the Island of Cuba, and in a letter addressed by the Governor-General to Don A. Calderon de la Barca, her Catholic Majesty's Minister in the United States copies of all of which are herewith transmitted.

There is no doubt that John S. Thrasher is a citizen of the United States by birth, nor is there any doubt that he has resided in the Island of Cuba for a considerable number of years, engaged in business transactions, sometime as a merchant, and sometimes as the conductor of a newspaper press; although the precise period and duration of such residence are not known. On this point, the Department has sought in vain for exact information. Mr. Thrasher himself has made no communication to this De partment, although he has, through the press, addressed a general letter of remonstrance to the Government and People of the United States.

In the letter from the Governor of Cuba to her Catholic Majesty's Minister in the United States, already mention ed, it is stated that he has been not only a resident in Ha allegiance to the Spanish Crown. There is no evidence in the possession of the Government to show what was his purpose with regard to returning to his native country at any fixed or definite time. Other members of his family are understood to be, like himself, residents in Cuba, hi father having gone to that Island some years ago.

These are all the known general facts, respecting the nature of his residence in Havana, which have come to the knowledge of this Department.

It appears that soon after the failure and breaking up of the late expedition of Narcisso Lopez, in the invasion of Cuba by him and the troops under his command, Mr Thrasher was arrested and tried for high treason, or con spiracy against the Crown of Spain, condemned to eight years' imprisonment to hard labor, and sent to Spain i execution of that sentence. There is no evidence in the Department to show what were the particular acts of treason or conspiracy alleged, or proved, against him. We have only the general statement, although pains have been taken to ascertain particulars.

The first general question, then, is, as to his right to

exemption from Spanish law and Spanish authority, on

the ground of his being a native-born citizen of the United The general rule of the public law is, that every perso of full age has a right to change his domicil; and it folbecause, in former times, no foreigners were allowed ac- lows, that when he removes to another place, with an intention to make that place his permanent residence, or his residence for an indefinite period, it becomes instantly his place of domicil; and this is so, notwithstanding he may entertain a floating intention of returning to his original residence or citizenship at some future period. The Supreme Court of the United States has decided "that a person who removes to a foreign country, settles him self there, and engages in the trade of the country. acts such evidences of an intentio furnishes by these permanently to reside in that country as to stamp him with its national character;" and this undoubtedly is in full accordance with the sentiments of the most eminer writers, as well as with those of high judicial tribunals or the subject. No Government has carried this general pre sumption further than that of the United States, since is well known that hundreds of thousands of persons are now living in this country who have not been naturalized according to the provisions of law, nor sworn any allegiance to this Government, nor been domiciled amongst us by any regular course of proceedings. What degree of alarm would it not give to this vastly numerous class of men actually living amongst us as inhabitants of the United States, to learn that, by removing to this country, they had not transferred their allegiance from the Government of which they were originally subjects to this Government And, on the other hand, what would be the condition of this country and its Government, if the Sovereigns o Europe, from whose dominions they have emigrated, were supposed to have still a right to interpose to protect such inhabitants against the penalties which might be justly neurred by them in consequence of their violation of the laws of the United States? In questions on this subject, the chief point to be considered is the animus monendi, or ntention of continued residence; and this must be decided by reasonable rules and the general principles of evidence. If it sufficiently appear that the intention of removing was to make a permanent settlement, or a settle ment for an indefinite time, the right of domicil is acquired by a residence even of a few days. It is undoubtedly true that an American citizen wh

goes into a foreign country, although he owes local and temporary allegiance to that country, is yet, if he per-forms no other act changing his condition, entitled to the protection of his own Government; and if, without the violation of any municipal law, he should be treated un justly, he would have a right to claim that protection; and the interposition of the American Government in his favor would be considered as a justifiable interposition. But his situation is completely changed, when, by his own act, he has made himself the subject of a foreign Power. And a person found residing in a foreign country is presume to be there animo manendi, or with the purpose of remaining; and to relieve himself of the character which this pre sumption fixes upon him, he must show that his residence was only temporary, and accompanied all the while with a fixed and definite intention of returning. If in that country he engages in trade and business, he is considered by the law of nations as a merchant of that country; nor is the presumption rebutted by the residence of his wife and family in the country from which he came. This is the doctrine as laid down by the United States Courts. And

and his infraction of those laws rendered him amenable to the tribunals which have been established for punishing the same. But Mr. Thrasher was something more than sinaply an American citizen; for he had become domiciled in the Island. In order that your Excellency may the better understand the duties appertaining to his may the better understand the duties appertaining to his and the duties appertaining to his and first solution, notaries, solicitors, notaries, and factors as they may judge proper, in all their can merchant, although the trade could be lawfully carried on by a Spanish subjects in the United States within Spanish subjects in the United States of things which would have neither the confidence of the Country; by a gents, and factors as they may judge proper, in all their can merchant, although the trade could be lawfully carried on by a Spanish subjects in the United States within Spanish subjects in the United States of things which would have neither the confidence of the Country; by a gents, and factors as they may judge proper, in all their can merchant, although the trade could be lawfully carried on by a Spanish subjects in the United States within Spanish subjects in the United States of the United States within Spanish subjects in the United States of the United States within Spanish subjects in the United States of the United States within Spanish subjects in the United States within Spanish subjects in the United States of the United States within Spanish subjects in the United States within Spanish Spanish subject, or a domiciliated freeman can alone transact, and actually swore allegiance to the Spanish Crown. For the purpose of showing the mode by which foreigners are domiciled in the Island of Cuba, and the duties thereby imposed upon them, and also by what means they obtain the ultimate right of naturalization, I have thought it worth while to quote at length a translation of the Royal Decree of January 17th, 1815, and also the Royal Colonization Decree of October 21, 1817. It is understood that no change has been made in the requirements of the Spanish law of domicil and naturalization since that

"All foreigners belonging to powers and countries that are friendly to me, who may wish to establish themselves, or who may already be established in the Island of Cuba, must pro-duce suitable evidence before the Government of said Island that they profess the Roman Catholic religion, and, without this indispensable qualification, they will not be allowed to become domiciled there; but my vassals in these dominions, and those inhabiting the Indies, need not be compelled to certify to this effect, inasmuch as, in regard to them, there can be no doubt

upon this point.

"Those foreigners who shall be admitted conformably to the provisions of the foregoing article, shall take the eath of allegiance and vassalage before the Governor, by which they shall take the conformation of the Indies. romise to obey the general laws and ordinances of the Indies

o which all Spaniards are amenable. to which all Spaniards are amenable.

"At the expiration of the first five years of residence in the Island, on the part of foreign colonists, and on their contracting then the obligation to remain there perpetually, they shall be allowed all the rights and privileges of naturalization, equally with such children as they may have brought with them, or who may have been born to them in the aforesaid Island, in order that the same may consequently be allowed to hold honorable offices, both civil and military, according to the talents of each individual." talents of each individual."

The same decree also provides that "aforeigner may reside in Cuba for the period of three months without letters of domicil," but that on his remaining there witho such letters, beyond the time specified, "he becomes guilty of disobedience to the laws, and amenable to such just punishment as, after a close examination of the cause may be imposed on him."

Upon the same subject, and in corroboration of the above, the royal colonization decree of October 21, 1817, says: "That letters of domicil shall be issued to any foreign colonist who professes the Roman Catholic religion, and takes the oath of allegiance, by means of which, during five years of residence, it shall be optional with him either to return to his old country or to present himself before the superior magistrate at the expiration of those five years, for the purpose of obtaining his natural-ization papers, which will be granted to him without any great formality, in order that, on being thus naturalized he may enjoy all the rights and privileges appertaining to Spaniards, as well as his sons and legitimate descend

On the 6th of March, 1818, the Governor General, in view of the above-mentioned royal decree of October 21. 1817, issued the following Bando Real, in which it is provided that "in the absence of the requisite qualifications in regard to the profession of Catholic faith, the fact shall be noted down in the letters of domicil, which will then be issued on probation for the term of two years. If at the expiration of those two years the applicant can not produce satisfactory evidence of his professing our sacred religion, the letter of domicil shall be taken away from him, and he will then be considered in the light of merely a transient foreigner, and, as such, be compelled to leave this island at the expiration of three months, in pursuance of the 28th article of the royal decree.'

But, independently of a residence with intention to continue such residence ; independently of any domiciliation ndependently of the taking of any oath of allegiance, or of renouncing any formal allegiance, it is well known that by the public law an slien, or a stranger born, for so long a ime as he continues within the dominions of a foreign Government, owes obedience to the laws of that Govern nent, and may be punished for treason, or other crimes, as a native born subject might be, unless his case is varied by some treaty stipulations; but this duty of obe lience to the laws, arising from local and temporary allegiance, ceases the moment he transfers himself back to his original country.

An American citizen, by birth, owing of course a native allegiance to the United States, going abroad and obtain-ing no residence under a foreign Government, and proessing to such Government no allegiance, and who should yet commit acts of hostility or war against this country, would seem to bring himself within the act of Congress which declares that if any person or persons owing allegiance to the United States of America shall levy war against them, or shall adhere to their enemies, giving them aid and comfort, within the United States or else where, he or they shall be adjudged guilty of treason. And the reason is plain, since his allegiance in such case is original and native, and has not been transferred. or lost in any other local allegiance, arising from residence elsewhere, but continues to be the primitive tie which binds him to his country. But, as has been already said, every foreigner-born,

residing in a country, owes to that country allegiance and bedience to its laws so long as he remains in it, as a duty mposed upon him by the mere fact of his residence, and the temporary protection which he enjoys, and is as much bound to obey its laws as native subjects or citizens. This is the universal understanding in all civilized States, and owhere a more established doctrine than in this country. Mr. Jefferson, when Secretary of State, in his letter to Gouverneur Morris, of the 16th of August, 1793, speaking of the right of private citizens to make war with a country with which the Government of the United States is at peace, says:

"If one citizen has a right to go to war of his own author , every citizen has the same. If every citizen has that right, then the nation (which is composed of all its citizens) has a right to go to war by the authority of its individual citizens But this is not true, either on the general principles of society, or by our Constitution, which gives that power to Congress alone, and not to the citizens individually. Then the first poition was not true; and no citizen has a right to go to war o nis own authority; and for what he does without right he ought to be punished. Indeed, nothing can be more obviously bourd than to say that all the citizens may be at war and ye

the nation at peace.
"It has been pretended, indeed, that the engagement of a itizen in an enterprise of this nature, was a divestment of the haracter of citizen, and a transfer of jurisdiction over him to another sovereign. Our citizens are certainly free to divest themselves of that character by emigration, and other acts manifesting their intention, and may then become the subjects of another Power, and free to do whatever the subjects of that Power may do. But the laws do not admit that the bare comaission of a crime amounts of itself to a divestment of the character of citizen, and withdraws the criminal from their the legal modes by which a citizen might disfranchise himself; nor render treason, for instance, innocent by giving it the force of a dissolution of the obligation of the criminal to his

This is in accordance with the opinion of the Circuit Court of the United States for Pennsylvania, by which it was stated, in 1793, that "If one citizen of the United States may take part in the present war, ten thousand If they may take part on one side they may take part on the other; and thus thousands of our citizens may associate themselves with different bellige rent Powers, destroying not only those with whom we have no hostility, but destroying each other. In such a case, can we expect peace among their friends who stay behind? And will not a civil war, with all its lamentable train of evils, be the natural effect ?"

Our citizens, who resort to countries where the trial by ary is not known, and who may there be charged with rime, frequently imagine, when the laws of those countries are administered in the forms customary therein, that they are deprived of rights to which they are entitled, and therefore may expect the interference of their own Government. But it must be remembered, in all such cases, that they have of their own free will elected a residence out of their native land, and preferred to live elsewhere and under another Government, and in a country which different laws prevail.

They have chosen to settle themselves in a countr where jury trials are not known; where representative overnment does not exist; where the privilege of the writ f habeas corpus is unheard of; and where judicial proceed ings in criminal cases are brief and summary. Having made this election, they must necessarily abide its con-sequences. No man can carry the segis of his national American liberty into a foreign country, and expect to hold it up for his exemption from the dominion and authority of the laws and the sovereign power of that country, unless he be authorized so to do by virtue of treaty

The definition of crimes, the denouncement of penalties for their commission, and the forms of proceeding by which guilt is to be ascertained, are high prerogatives of sovereignty, and one nation cannot dictate them to ano ther without being liable to the same dictation herself.

The friends of Mr. Thrasher interpose in his behalf the th article of the treaty of 1795, which declares that in all cases of offences committed by any citizen or subject of the one party within the jurisdiction of the other, the same shall be prosecuted by order and authority of law only, and according to the regular course of proceeding n such cases. They shall also be allowed to employ such advocates as they may judge proper before the tribunal of the other party, who shall have free access to be present at the proceedings in such causes, and at the taking of all examinations and evidence which may be exhibited in the said trials.

As the public law, however, does in no case impart to his not been naturalized in this country. What will be gain by that? Even if he were simply an American citizen he could not better his position; for, as it has already been shown, he was, as such, obliged to respect our laws,

might complain, perhaps, of a trial by jury here because of the supposed partialities and prejudices of juries. While an American in Spain complains of condemnation, in sum-mary form, by judges, without the intervention of a jury to ascertain his guilt. The question arising on the latter clause of this 7th article of the treaty with Spain may not be entirely clear or free of difficulty, especially when it is known that the minister who negotiated this treaty on the part of the United States appears to have attach ed considerable importance to this right of selecting and employing counsel. Mr. Thomas Pinckney, the American negotiator, says, in a letter on the subject of the treaty, that the first part of this 7th article was taken from the 16th article of our treaty with Prussia, and that he added the latter part because he considered it a good stipulation

in all situations, but particularly in Spain.

We can rendily imagine why it should have been stipulated n the treaty that the trial of an American citizen in Spain should be open and public, because we know that as late as the year 1795 there existed in Spain an ecclesiastical jurisdiction, having the power over life and death, whose proceedings were always secret. Whether it was intended by the parties that this right of selecting counsel in the case of the arrest or the trial of an American citizen, should extend further or be broader than in the case of a Spanish subject prosecuted for a similar offence, may be matter of doubt and controversy. The view which the Spanish courts of the highest jurisdiction take of it, may e seen by the communication of the Royal Court of Judicature accompanying the letter of the Governor General to Mr. Calderon. But, however all this may be, the general question still returns, whether this right secured by treaty, whatever it is, be not justly limited to such persons as are at the time in all respects American citizens, having never voluntarily changed their domicil or taken

upon themselves a new allegiance.

In this view of the case, it might therefore be asked whether, if Mr. Thrasher had been a native born subject of Her Catholic Majesty, his trial and its result would ave been different from what they actually were.

If indeed Mr. Thrasher, in his arrest and trial, did not en oy the benefits which native-born Spanish subjects enjoy in like cases, but was more harshly treated, or more severely punished for the reason that he was a native-born citizen of the United States, it would be a clear case of the violation of treaty obligations, and would demand the inter position of the Government. There exists in this Department no proof of any such extraordinary treatment of Mr. Thrasher. It may have taken place. In the absence of all other information, reference is made on that point, as well as to all the rest of the case, to the letter of the overnor General of Cuba to Mr. Calderon, her Catholic Majesty's Minister Plenipotentiary to this Government.
For the further information of the House of Represent

tives, I also transmit herewith a copy of the despatch of the 13th instant, from this Department to the Minister of the United States at Madrid, and of despatches to the act-ing Consul at Havana of the 12th and 28th of November last. DAN'I, WERSTER

THE STUGGLE IN FRANCE FORESHADOWED.

THE OPPOSITION CHARGED AS CONSPIRATORS. We invite attention to the following important article. It possesses the deepest interest in connexion with the recent intelligence from France. It ppeared in the Paris Constitutionnel of the 17th iltimo, that paper being one of the organs of Louis Napoleon. It will be seen that the struggle that has taken place was distinctly threatened:

STATE OF PARTIES IN FRANCE.

the people generally for politics; notwithstanding the horror evinced by the agricultural, industrial, and compressed by the agricultural, industrial, and compressed by all horses families by all specific particulars. The provided statement of the Republic in particular, under the Red Dictatorship attempted in the stead of the White Dictatorship, we can mercial classes, by all honest families, by all sensible men, for new subversions, yet at no time have so many conspiracies been on foot, so many coup de mains contemplated, as at the present moment, in the higher regions of society, and among the leaders of ancient factions. The ambitious and the factious do not wish the re-establisment of order, and of confidence in labor, if thereby society should

We have already escaped by a miracle two or three hot house revolutions, forced in two or three political salons, deliberated in a newspaper office, set on foot in the lobby of the Assembly; miracles are rare, and it would be adventurous to rely upon them. France may awaken up to-morrow, after to-morrow, at any moment, to the formible sound of a universal convulsion; at least, it be- use of their extreme rights, they infallibly engender rehooves her to know, if she perishes in the ruins, who pre-pares them, and from what quarter the destruction comes. sistance or collision—a catastrophe. Article 14 of the pares them, and from what quarter the destruction comes. We shall say nothing that is not openly said in political which the monarchy endeavored to make an extreme use circles, and we are not bound over to more discretion of against the expression of public opinion. Every one than the conspirators.

We were within a hair's breadth of civil war on Monday last. The parties in dispute with each other for power had flung before the Assembly a proposition having for object not so much to give an army to the legislative power as to excite indecision and disorder among the troops, and to furnish to an audacious general the occasion and the means of seducing a regiment. Had the Assembly been weak enough only to take into consideration the propositions submitted to it, they would also have extorted from it an impeachment. The conspirators had already prepared their coup-de-main. Armed with a vote more or less conclusive, more or less explicit, they would have arrested the Ministers in the Assembly itself, and, if that succeeded, would have attempted to carry off the President. But, as may be supposed, the President and his friends were not over disposed to allow such a trick to be practised

upon them.

The assailants would have been received with musket shots, or still better, and the battle would have at once commenced in the streets. Such a result was possible up to half past seven o'clock. The act of the Assembly prevented it. Certainly nothing can be more criminal, more mad, more monstrous, than such plan: vet it is not the less true that it existed, and there is not a single person in the political world who is ignorant of the fact. This flagrant, incessant conspiracy against the President of the Republic has for its contrivers parliamentary men, the avowed leaders of the Legitimist and Orleanist parties; they are profoundly divided amongst themselves, but are united by the common hatred they bear to the elect of the 10th of December. That conspiracy was organized eighteen months ago; and from the period when a well-known general occupied the Tuil-Louis Napoleon Bonaparte and imprisoning him at Vin-

cennes has been discussed. On this there is not the slightest doubt. It was a former Prime Minister of Louis Philippe who was present at those meetings, and who informed the President of the Republic of the plot hatched against him. Abandoned for a few months, in consequence of the visits to Wiesbaden and to Claremont, this old standing conspiracy of Legitimists and Orleanists against the elect of the 10th December has been recently resumed; it has been cemented by the abandonment of the proposition of M. Creton and the candidateship of the Prince de Joinville. Although invented and conducted by ancient Ministers, and by veterans of the Parliament, this conspiracy exceeds in its ridicu-lous character all that has been related in the books of St. Real and of Vertot. The object of the conspirators was to establish a dictatorship, with the support and under the control of the present Assembly, which was to be prorogued indefinitely, and which was to proclaim itself a evention. The dictator is known to every one-it is

We will not discuss that project. To take the army from the President, from the elect of the country, from the defence of order and law, to give it as a piece of fur-niture, as a very tool, by a vote of the Assembly, to a hap-hazard Pichegru, is madness, and nothing else. No pow-er, however constituted, would succeed to triumph over equity, public common sense, and morality; the Assemticed, misled, carried away, as has been the case with other Assemblies, might, to its own detriment and to ours, make a dictator; it might give him a title; it would not give him authority or strength, because there is nei-ther strength nor authority beyond the limits of honesty f what is just and upright.

Let us suppose the impossible; let us suppose a res dictator, all powerful, though got up in a hurry in the midst of a tunult. His first act would be to dissolve the Assembly that created him, if but to avoid the weakening influence of the forced dislocation of a passing majority, the result of chance.

Thus four or five former ministers, ten or twelve ar cient deputies, grown gray in the service—men of experience, who ought to know better—try to play and make the Assembly play a game pretty much as follows: To replace the elect of six millions of votes by the elect of some fifteen conspirators; the nephew of the Emperor by a general who has not distinguished himself either on the eld of battle or elsewhere; a name of magical influence by an impotent one; an honest, orderly power, which de fends the interests of society by an irregular and revolutionary one that would undermine public tranquillity; a strong authority which commands the respect of all partime and the 1st of March next.

which for nearly two years some statesmen, yelept the leaders of the majority, have entered upon with the pros-pect, after a long succession of lucky chances, of arriving

—at what? To make the Assembly declare a dictator-ship, the first logical act of which would necessarily be to turn the Assembly out of the windows. That extravagant conception the success of which was counted upon last Monday at half-past seven, and which was defeated at eight o'clock by the vote of the Assembly, why did it not succeed? Because it would have led

to a white (letigitimist) dictatorship.

The Mountain smelt a rat. They voted in a body against the would as smelt a rat. They voted in a body against the vote of the questors at the very moment M. Baze was preparing to impeach General St. Arnaud, and when some impatient conspirators exclaimed behind the Ministerial benches, "Arrest them all! all of them! whilst they are kere."

Crest-fallen by their severe defeat, which came so close on the heels of that of the day before, on the law of the 31st of May, the leaders of the conspiracy resolved to

make another attempt.
Why did the Mountain vote in a body against the proosition of the questors? Because its object was a white dictatorship, and to place the absolute power in the hands of a General who had instructions to transport them or shoot them down with grape if necessary. A plan was therefore necessary to re-assure the Mountain, and which would allow it at the same time to consult its hatred of the President, without fear of a coalition between the Legiti-mists and Orleanists.

The plan was not difficult of execution. A simple change of the color of the dictatorship and of the name of the dictator was all that was required. The same men who last week hazarded the destinies of France on the chance of a white dictatorship with Gen. Changarnier, are going to do the same this week with a red dictatorship and Gen. Cavaignac.

We are come to this pass: they are playing pitch half-penny with the country. Heads have lost, tails may win. In the commission appointed to examine the project of law on the responsibility of the President of the Republic, which comprises the names of MM. Creton and Jules de Lasteyrie, two declared partisans for the recall of the Orleans Princes and the candidateship of the Prince de Join-ville; of M. Dufaure, who energetically opposes that recall; of MM. Berryer, Bechard, and de Laboulie, inexo-rable opponents of that candidateship; of M. Berryer, the author of that fine speech on legitimate monarchy; of M. Dufraisse, the apologist of the murder of Louis XVI; moreover, the names of Legitimists, Orleanists, and Royalists-we beg of all honest men to state what is their can-

did opinion of such a coalition? Its members hate each other, yet they unite for a common object. It is the custom, we are aware, to regard the men of whom we speak, viz. MM. Berryer, Thiers, Bechard, and de Laboulie, de Lasteyrie, Creton, even Dufaure, as, to a certain degree, the chiefs, and the supporters of the conservative and monarchical parties. This is the deep and deplorable error kept up by the journals of coteries amongst. the pacific population, who take no part in public affairs. These same men are, and are nothing else, than pure revolutionists, speaking and acting as revolutionists under the mask of royalists and conservatives, whose principles they endanger and whose cause they lose. The habit of cunning, of coalitions, has deeply depraved their minds; they now believe in nothing but their own ambition and their vanity. They might have been, they have been, po-litical characters, advocating monarchical and conserva-tive doctrines; they are nothing more than little advo-

cates, members of a faction, plotting against public order, and making revolutions against society at large.

Their sole object is to do away with Louis Napoleon Bonaparte, who becomes daily more popular, and the wis-dom of whose Government has earned for him the respect Notwithstanding the almost universal calm of the pub- of all honest and peacefully-inclined families. In reply to ic mind; notwithstanding the profound indifference of the question, what danger presents itself for public tran-

> only say, none whatever. First of all, it is our hope and our conviction that the same reasons which prevented the Mountain from con-senting to the white dictatorship, will deter real and ho-nest conservatives from the red; and the Assembly will be as loth to hand over France to Gen. Cavaignac as it

was to do the same to Gen. Changarnier.

But let us go further: let us take an extreme case; le be saved, and escape from their plans of domination and exploitation. They make up their minds to behold the pavement of Paris again torn up, the strangers leaving the shops shut, the mob singing the Ca Ira! the people have been informed it intends, and as it is openly declared in the hyroun of the Assembly let us suppose we repeat. pavement of Paris again torn up, the strangers leading the shops shut, the mob singing the Ca Ira! the people terrified by the predications of the clubs; they can resign themselves to every thing except the loss of their own themselves to every thing except the loss of their own themselves to every thing except the loss of their own themselves to every thing except the loss of their own the majority of 108 votes it had against it. Well, tion the majority of 108 votes it had against it we maintain that even then public order and the President incur no danger, for who dare to guaranty that the Assembly would be obeyed?

knows what was the consequence.

The Assembly, which has no constituted power above it, may vote regularly whatever it thinks fit—the responsibility bill, the proposition of the questors, and a hundred other things of a similar nature; but as such measures would be a manifest attack upon the President of the Republic, as they would become an instrument to serve the passions and interests of ancient factions, they would offend passions and interests of ancient factions, they would offer public morality, the common sense and equity of the popu-lation would stand up manfully for the oppressed against the oppressors, and the Assembly, in spite of its rights, in spite of its prerogatives, would only obtain a battle. Now battles have their chances, habent sua fata, and should it take as its champion the sword of that General, who, as he asserts, is accustomed to conquer, perhaps but few would enrol themselves under its banner.

In no case, then, are those conspirators dangerous. Independently of their folly, they have against them the entire country, which does not desire any more experiments, revolutions, and ruin. What they would have against them are less their adversaries than their own allies. The Government are, as may be supposed, aware of their plots and of their movements, and, though they may not know the fact, they have, every man of them, the firm and determined

hand of justice constantly suspended within an inch of their collar. The proof that they are not dangerous is that they are not as yet shipped off. Go on knights-errant of princesses lost, like the wife of Eneas, amongst the ruins of thrones which are broken to pieces, or which are burnt! Conspire as much as you please; walk about like spectres in the dead of night, with your pale unearthly faces, that terror convulses, and point out to the country the con-spiracies of the Elysée in order to mask your own! No eries, meetings of well-known public men have been held one is mistaken as to your projects, and no one fears them. in his rooms—meetings where the question of arresting If you are without pity for France—if you refuse, in spite of her prayers, to spare her another revolution, you will seen nothing by your efforts nor by your shame. Blinded gain nothing by your efforts nor by your shame. by your fury, as the bull by the crimson flag, you rush headlong on the point of the sword, which, pointed and immovable, awaits you.

> THE McDonogh WILL.-We learn from an authentic ource that the executors of the late John McDonogh, of New Orleans, submitted his will, during the last summer, to five of the ablest jurisconsults in Paris, as the suits brought against the validity of the testament must be decided by the civil law. In the letter submitting the case, a frank opinion was asked for, and not such a one as would gratify the wishes of the clients, or indeed of either party. A letter has been received from one of these eminent men, in which he states that the opinion of the whole of them is, without reservation, in favor of the validity of the will. We are further informed that when this letter was written the opinion was in the press, and that it will be in this country in about a fortnight. It is said to be very full, and quotes all the authorities bearing on the questions now before our Courts. Besides deciding the validity of the will, these gentlemen give an unequvocal opinion against the suits brought by the States of Maryland and Louisiana. Our informant expresses the belief that the well-matured and disinterested decision of such men will have paramount authority in Louisiana, as, in appeals from the Canadian Courts to the House of Lords, it is the invariable practice to send the case to Paris. The Peers will not undertake to decide of themselves points arising out of the civil law, but are governed by the advice of eminent French lawyers. The edge of this usage induced the chairman of the executors, Mr. Roselius, of New Orleans, to send the will, with the concurrence of his colleagues, to France. We have been promised a copy of the opinion referred to as soon as it is received in New Orleans. The French lawyers whose

Paris; and Delangle, ex-Procureur General of the Royal Court of Paris.—Baltimore American. EATON DEVOE, a pretended Temperance Agent, has been ent to the penitentiary for three years for obtaining money from Hon. Amos Lawrence, of Boston.

pinions have been obtained are Giraup, Minister of Jus-

code : Corn Destiste, author of a treatise on testamentary

levises, a work of the highest authority; Mourron, a

selebrated Professor of civil law of the law sch

e; MARCADE, the great commentator on the Napoleon